

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 JIMMIE STEPHEN,

12 Petitioner,

13 v.

14 WARDEN G. MATTESON,

15 Respondent.
16

No. 2:20-cv-1003 KJM KJN P

ORDER

17 Petitioner is a state prisoner, proceeding pro se, with a petition for writ of habeas corpus
18 under 28 U.S.C. § 2254. On June 10, 2021, petitioner filed motions to strike and for an “order for
19 certification.” (ECF Nos. 31, 32.) As discussed below, petitioner’s motions are denied.

20 Motion to Strike

21 Petitioner’s motion is unclear. Initially, he contends respondent’s answer was filed
22 “early.” (ECF No. 31 at 1.) However, the court’s order granted respondent an extension of time
23 to answer “by June 10, 2021.” (ECF No. 24.) Nothing in the order precluded the filing of an
24 answer prior to June 10, 2021.

25 Petitioner also appears to claim that the reasons cited for the request for extension of time
26 filed by respondent were false because the new attorney relied on some of the same reasons as
27 prior counsel, but petitioner also appears to contend that respondent’s answer contains some of
28 the same arguments recited in the prior motion to dismiss which was denied. (ECF No. 31.)

1 Petitioner also contends that the answer is insufficient, and asks the court to strike the answer and
2 enter respondent's default.

3 Petitioner is advised that this court had jurisdiction to grant respondent's request for
4 extension of time, *nunc pro tunc*, in which to file a responsive pleading. Moreover, "[a]lthough
5 the Rules of Civil Procedure apply in habeas corpus proceedings, see Gonzales v. Crosby, 545
6 U.S. 524, 529 (2005); see also Fed. R. Civ. P. 81(a)(4), it is improper to issue a default judgment
7 granting a habeas petition." Allen v. Tripp, 2013 WL 1345842, at *1 (D.D.C. Apr. 2, 2013) (first
8 citing Bermudez v. Reid, 733 F.2d 18, 21-22 (2d Cir. 1984); then citing United States v.
9 Brisbane, 729 F. Supp. 2d 99, 107-08 (D.D.C. 2010)); see also Aziz v. Leferve, 830 F.2d 184,
10 187 (11th Cir. 1987) ("[A] default judgment is not contemplated in habeas corpus cases.").
11 Rather, because a habeas petition implicates the interest of "the public at large," a court must
12 "ensur[e] that habeas petitions are granted only when the court is satisfied of their merits, on the
13 basis of the best obtainable evidence." Bermudez, 733 F.2d at 22. Thus, petitioner's motion to
14 strike the answer and take respondent's default is denied.

15 The undersigned finds that petitioner's motion is not well-taken. Respondent filed an
16 answer, and properly addressed petitioner's claim on the merits, rather than through a motion to
17 dismiss. Petitioner may not dictate how opposing counsel addresses petitioner's claims. Rather,
18 petitioner may contest respondent's arguments by filing a traverse or reply.

19 Motion for Certification

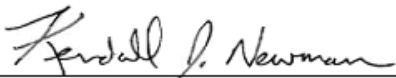
20 Petitioner's motion for certification is similarly unclear. He references the civil rights
21 statute, 42 U.S.C. § 1983, and "tort claim" in the title of his filing. (ECF No. 32 at 1.) But this
22 action proceeds solely under 28 U.S.C. § 2254. Petitioner cannot obtain civil rights relief through
23 his habeas petition. Petitioner claims that respondent failed to rebut or attack the "statutory
24 maximum," but then cites respondent's motion to dismiss, which was denied. (ECF No. 32 at 1.)
25 To the extent petitioner seeks an order certifying this case for appeal, or, as more appropriately
26 sought in a habeas action, issuing a certificate of appealability referenced in 28 U.S.C. § 2253,
27 petitioner's request is premature. Petitioner has until July 1, 2021, in which to file his traverse or
28 reply to respondent's answer. Then the matter will be submitted for decision. Once the

undersigned issues findings and recommendations, petitioner may file his request for certificate of appealability with his objections, if any, to such findings and recommendations. To the extent petitioner requested a certificate of appealability, his request is denied without prejudice.

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's motion to strike (ECF No. 31) is denied;
2. Petitioner's request for order for certification (ECF No. 32) is denied; and
3. To the extent petitioner requested a certificate of appealability, his request is denied without prejudice.

Dated: June 25, 2021


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

/cw/step1003.den2